EXHIBIT 8

EXHIBIT 1:

Excerpts from
In re Hostess Brands, Inc.,
No. 12-22052 (RDD)
(Bankr. S.D.N.Y. May 14, 2012)

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-22052(RDD)

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In the Matter of:

HOSTESS BRANDS, INC.

Debtors.

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U.S. Bankruptcy Court

One Bowling Green

New York, New York

May 14, 2012

3:07 PM

B E F O R E :

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: Willie Rodriquez

HEARING re: Statement/Notice of Agenda Matters Scheduled for Hearing on May 14, 2012

HEARING re: Motion of The Bakery, Confectionery, Tobacco Workers and Grain Millers International Union to Dismiss Case for Lack of Subject Matter Jurisdiction

HEARING re: Debtors' Motion and Debtors in Possession to (A) Reject Certain Collective Bargaining Agreements and (B) Modify Certain Retiree Benefit Obligations, Pursuant to Sections 1113 (c) and 1114 (g) of the Bankruptcy Code.

Transcribed by: Sheila Orms

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So it's the same scenario. You're just looking at a future contribution obligation that we have made the determination, you know -- well, the idea behind the future contribution obligation is it postpones insolvency. And it's a better scenario for the fund overall and for the participants and beneficiaries of the fund.

THE COURT: Okay.

MR. BERLINER: Thank you.

THE COURT: Anything else?

MR. HAMILTON: We'll stand on our brief, Your Honor.

THE COURT: Okay. All right. I have before me a motion by the debtors in this case to reject their collective bargaining agreements with the IBT or the Teamsters pursuant to Section 1113 of the Bankruptcy Code and as well to reject the benefit plan obligations provided for in the CBAs under Section 1114 of the Bankruptcy Code. Pursuant to prior orders of the Court, the IBT was delegated as the bargaining representative for both of those matters.

Section 1113 of the Bankruptcy Code governs a debtor's rejection of collective bargaining agreements. It requires the bankruptcy court to approve the rejection only if the Court makes the following three findings: First, the trustee or, in this case, the debtor-in-possession has prior to the hearing made a proposal that fulfills the

requirements of Subsection (b)(1) of Section 1113; two, the authorized representative of the employees has refused to accept such proposal without good cause; and three, the balance of the equities clearly favors rejection of the CBA, 11 U.S.C., Section 113(c).

Because Section 113(c)(1) incorporates Subsection (b)(1) by reference, the bankruptcy court must also look to Subsection (b)(1), which provides as follows:

"Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor-in-possession or trustee -- hereinafter in this section, trustee shall include a debtor-in-possession -- shall (A) make a proposal to the authorized representative of the employees covered by such an agreement based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees' benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and (B) provides, subject to subsection (d)(3), which is the confidentiality section, the representative of the employees with such relevant information as is necessary to evaluate the proposal."

Thus, as Collier notes, Section 113(c)

incorporates both procedural and substantive requirements. See 7 Collier on Bankruptcy, paragraph 113 -- 1113, excuse me, point 04.

The debtors and the IBT agreed upon the specific proposal by the debtors that would be the proposal to be evaluated by the Court in this context as well as the IBT's responsive proposal. They have both been provided to the Court. They are both changed from the initial post-petition pre-1113 motion proposal by the debtor as well as the initial responsive proposal by the Teamsters.

After a period as contemplated by the Court and the code for bargaining off of the original post-petition pre-motion proposal, this Court held a two-day evidentiary hearing, as contemplated by Section 1113(c), on April 18th and 19th. The statutory period within which the Court is supposed to rule on such a motion has not run. There is still a fair amount of time as far as these types of motions are concerned for the parties to continue to negotiate.

In addition, the covenant in the debtors' DIP agreement requiring a resolution of the 1113/1114 motion acceptable to the DIP lenders also has not run, although its expiree is at the end of this week. Nevertheless, the parties have informed the Court that all things considered, they are either neutral about the Court's ruling today or believe, in the debtors' case, that a ruling would assist

the parties in attempting to negotiate a resolution of their disputes.

That is clearly the desired goal of Section 1113 of the Bankruptcy Code, as stated repeatedly by the Second Circuit, most recently by Chief Judge Jacobs in his concurring opinion in In re Northwest Airlines Corp, 483 F.3d 160 at page 179 through 180. Section 113 sets in motion an expedited form of collective bargaining with several safeguards designed to ensure that employers do not use Chapter 11 as medicine to rid themselves of corporate indigestion, citing Century Brass Products, Inc. v. United Auto, Aero and Agricultural Implement Workers of America, 795 F2d 265, 272, Second Circuit, 1986.

The process ensures that well informed and good faith negotiations occur in the marketplace not as part of the judicial process. Reorganization procedures are designed to encourage such a negotiated voluntary modification.

"Knowing that it cannot turn down an employer's proposal without good cause gives the union an incentive to compromise on modifications of the collective bargaining agreement so as to prevent its complete rejection. Because the employer has the burden of proving its proposals are necessary, the union is protected from an employer whose proposals may be offered in bad faith." In re Maxwell

Newspapers, Inc., 981 F2d 85, 90, Second Circuit, 1992.

Therefore, except with respect to the speed involved, and Judge Jacobs describes it as essentially collective bargaining on wheels at 179, the purpose of Section 113, albeit in a Chapter 11 context with a focus on the fact that Chapter 11 is indeed a serious and unique context for dealing with an employer's financial problems, it is designed to come as close as possible to the out of bankruptcy collective bargaining process.

During the April 17th through 18th trial, I considered the testimony of the following witnesses: Gregory Rayburn, the debtors' CEO; Dr. John Johnson, an expert witness retained by the debtor primarily to assess the marketplace and/or competitive nature of the IBT's compensation, both hard and soft; Jeffrey Parlato, the employee of the debtors most responsible for negotiating collective bargaining agreements, including with the IBT; Mitchell Hofing, also an expert called in rebuttal in respect of multi-employer pension plan issues; and Michael Kramer, the debtors' investment banker at Perella Weinberg.

I also heard the testimony of Daniel Wrenn, a IBT member and route sales representative with Hostess since 1983; Harry Wilson, the chairman and CEO of the Maeva Group, M-A-V -- M-A-E-V-A, who can best be described as Mr. Kramer's opposite number as the financial adviser for

Chapter 11 purposes to the IBT; Michael Belzer, an economist also called to opine as to the competitive nature of the compensation, both hard and soft, for the IBT workers; Iain Gold, somewhat of the opposite number to Mr. Parlato; and Ken Hall, the general secretary-treasurer of the IBT and ultimately responsible for the negotiations of the new collective bargaining agreement and the present relationship between the IBT and the debtors from the IBT's perspective. I also considered as rebuttal witness Joshua Scherer, another member of Perella Weinberg, the debtors' financial adviser, with respect to the nature of the negotiations primarily between the two sides.

I found all of the witness's testimony to be credible, particularly so with respect to the fact witnesses and Mr. Kramer and Mr. Wilson. The debtors' expert, Mr. Johnson, and his opposite number, Mr. Belzer, at times seemed to be talking at cross-purposes with each other, sticking to their sources for their data. But I did not find either of them within the general skepticism that the Court treats each side's expert to be out of line in their testimony.

As far as the procedural aspects of Section 113 are concerned, I find that the debtor has complied with each of the -- of such requirements of Section 113(b)(1) and (c). The debtor made a proposal to the IBT accompanied by the

kind of relevant and reliable information needed to evaluate it. And further, I believe it bargained in good faith with the union. See In re Century Brass, 795 F2d at 7 -- at 273, Second Circuit, 1986.

Frankly, there was no complaint by the union as to the completeness and reliability of the information provided by the debtors. And it appeared to me that the union and not only Mr. Wilson but also Mr. Hall and Mr. Gold were at least as well informed about the debtor as were the debtors' representatives.

Obviously, the aspects of information pertaining to the debtors' future, including the debtors' projections and the implementation of its business plan, which contemplates very substantial changes to the natures -- the debtors' cost structure and the nature of its business cannot be predicted with any certainty. But I have reviewed the debtors' business plan and the modification of it initiated by Mr. Rayburn and dated April 4th, 2012, and I believe that it is a good enough picture of not only the debtor today but also as projected for purposes of the information requirements of Section 113(b)(1).

It is clear from the case law, including based on the quote I earlier gave from Maxwell Newspapers at Page 90, that the debtor must bargain in good faith with the union as part of the procedural elements of the statute. See also In

re Century Brass, 795 F2d at 273, and Truck Drivers Local 807 versus Carey Transportation, 816 F2d 82, 90, Second Circuit, 1987.

It's not entirely clear where this requirement appears in the statute, although the best place for it is probably 1113(b)(2), although that is not specifically incorporated in Section 1113(c)(1). Nevertheless, it is a clear element as established by the case law in this circuit of the debtors' burden to show that it did in fact bargain in good faith after it submitted its original proposal.

Certain of the IBT's witnesses, including Mr. Wilson, have acknowledged that the debtor has bargained in good faith. Mr. Hall took some exception to that based upon his experience in normal collective bargaining, i.e. not bargaining on wheels, under Section 1113 of the Bankruptcy Code. In that regard, he expressed concern about the debtors having made one proposal and changed the terms in a subsequent proposal in a way that appeared to him to be re-trading.

In addition, he was clearly frustrated by the fact that the debtors submitted their penultimate proposal 25 minutes after the deadline set by the Court and did not discuss it with him or his agents before it was released to the press. I believe he was also frustrated by the fact that in the middle of this extremely time-compressed

process, the debtors' CEO resigned and Mr. Rayburn was appointed CEO in Mr. Driscoll's place.

However, for purposes of the good faith requirement under Section 1113, I believe none of those considerations would lead one to conclude that the debtor has not negotiated in good faith. Rather, I find that the debtor has negotiated in good faith with the IBT.

As far as changing positions or putting on the table proposals that had been taken off the table previously, I conclude first that it is more common in an 1113 context for debtors-in-possession to move the pieces around in a collective bargaining proposal to try to obtain the result that is in monetary terms acceptable to the debtor and in terms of specific emphasis still acceptable to the union. Secondly, I believe because of the midstream change of CEO, some confusion as far as the specific terms of the debtors' proposals is understandable, and I believe that the alleged re-trading here falls into a relatively minor part of the debtors' negotiating proposals.

Finally, it appears to me that Mr. Rayburn has acted responsibly and effectively in stepping into the breach left by Mr. Driscoll. I have reviewed his April 4th turnaround plan and believe that it is reasonable and an improvement upon the debtors' February plan, and that he has generally taken hold of the debtors' business, including

effectively dealing with the prepetition salary/bonus increase issue that had the potential for truly poisoning the negotiations by causing, with the agreement of the effective -- the affected officers of the company, the reversal of that transaction. So I conclude that the debtors have satisfied the procedural elements of Section 1113(b) and (c).

In order to comply with the substantive requirements of Section 1113(b)(1), the debtor, again, must demonstrate that the modifications and benefits and protections are necessary to permit the reorganization of the debtor, and all creditors, the debtor and all affected parties are treated fairly and reasonably. The most fundamental requirement for rejection of the collective bargaining agreement is that the rejection must be necessary.

This is obviously a change from the standard set forth in Section 365 of the Bankruptcy Code. The debtor must show not only that the agreement is burdensome but that the rejection is necessary to permit the reorganization of the debtor. See Carey Transport, 816 F.2nd at 90.

As developed in the Second Circuit, the court specifically rejected the Third Circuit's narrower construction of Section 1113 in Wheeling-Pittsburgh Steel versus United Steelworkers, 791 F2d 1074, 1088 through 89,

Third Circuit, 1986, where that court construed the term necessary to encompass only those modifications essential to the debtors' short-term survival or necessary to prevent liquidation. As stated by the Second Circuit in Carey Transport, the Second Circuit reads the term to mean that the proposal contained necessary but not absolutely minimal changes that will enable the debtor to complete the reorganization successfully.

As that court explained, the term necessary could not be synonymous with essential or bare minimum because if a debtor were constrained to propose only the minimal changes to a collective bargaining agreement, it would have no room to engage in the good faith negotiations required by Section 113. Rather, a debtor's proposed modifications are considered necessary if they have a significant impact on the debtor's operations and are required for the debtor to reorganize successfully and compete in the marketplace upon emergence from Chapter 11, 816 F2d at 89 through 90. See also Royal Composing Room, Inc. -- In re Royal Composing Room, Inc., 848 F2d 345, 348, Second Circuit, 1988, and In re Northwest Airlines Corporation, 346 B.R. 307, 321, Bankruptcy S.D.N.Y 2006.

The focus is on, again, therefore necessary for a successful reorganization to enable the debtor to compete in the marketplace upon emergence from Chapter 11. This does

not mean, though, that the debtor is required to demonstrate how each element of modification is necessary. Rather, when determining the necessity of the debtor's proposal it must be viewed as a whole as achieving those elements that are necessary to enable the debtor to reorganize effectively. Royal Composing Room, 848 F2d at 348.

The debtor must also demonstrate that all creditors, the debtor and all affected parties are treated fairly and equitably under 1113(b)(1). The purpose of this requirement is to spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree. In re Century Brass, 795 F2d at 273, Carey Transportation, 816 F2d at 90. In other words, the debtor must spread the hurt. In re Horsehead Industries, Inc., 300 B.R. 573, 584, Bankruptcy S.D.N.Y. 2003.

It is clear, though, that under the standard the various constituencies need not share an identical burden. The key phrase as set forth by Century Brass and Carey Transportation is, quote, to a similar degree. Therefore, the debtor has the burden to demonstrate why one particular constituency must bear more than its proportionate share of the financial burden. In doing so, courts apply a flexible approach in determining what constitutes fair and equitable treatment. See for example in re Indiana Grocery Company, 136 B.R. 182, 194, Bankruptcy SD Indiana, 1990, quote,

"Equity under Section 1113 means fairness under the circumstances."

As noted by Judge Gropper in the Northwest Airlines case, a debtor can meet the fair and equitable requirement of Section 1113 by showing that its proposal treats the union fairly when compared with the burden imposed on other parties by the debtor's additional cost-cutting measures and the Chapter 11 process generally. Thus, for example, the Court needs to take into account the rights and leverage in terms of both legal rights and rights in the marketplace or leverage in the marketplace of the other constituents in determining what is fair and equitable for purposes of this subsection of the statute.

The statute in Section 1113(c)(3) also requires the Court to balance the equities so that it finds or to find that the equities clearly favor rejection of the agreement. It's recognized that this requirement codifies the aspect or that aspect of NLRB v. Bildisco and Bildisco, 465 U.S. 513, 1984. See In re Century Brass, 795 F2d at 273.

It also is a flexible standard applied on a case-by-case basis, but the Second Circuit has directed courts to look at the following factors to determine whether the balance of the equities clearly favors rejection, in Carey Transportation, 816 F2d at 93:

"One, the likelihood and consequences of liquidation if rejection is not permitted; two, the likely reduction in the value of creditors' claims if the bargaining agreement remains in force; three, the likelihood and consequences of a strike if the bargaining agreement is voided; four, the possibility and likely effect of any employee claims for breach of contract if rejection is approved; five, the cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and six, the good or bad faith of the parties in dealing with the debtor's financial dilemma."

In short, in striking the balance, the Court must consider the degree as well as any qualitative difference between the hardships each party may face upon rejection of the collective bargaining agreement, 7 Collier on Bankruptcy, paragraph 1113.057. Certain of those factors would in light of subsequent decisions both by the lower courts and by the Second Circuit in the Northwest Airlines decision require a further gloss. For example, in Northwest Airlines, 483 F2d 160, the Second Circuit held that unless offered by the debtor as part of the resolution of a -- the consensual resolution of a Section 1113 motion or a court-imposed resolution, the union would not have a rejection

claim.

But I believe the factor still needs to be considered as has been acknowledged by subsequent courts in light of, again, sharing the cost. That is, it is appropriate for a debtor to consider offering such a claim, even though it is not required to do so upon rejection. Similarly, the issue of the likelihood of a strike may not carry much weight if, as was the case in the Horsehead decision that I cited earlier by former Chief Judge Bernstein, the Court concludes that the debtor would liquidate either upon a strike or, importantly, if the debtors' motion were not granted.

Nevertheless, it is a relatively flexible set of factors, again, focusing primarily on the rights and leverage both legal and business of the parties in the context of the debtors' reorganization. In large measure, it focuses on treatment of non-union employees in comparison to union employees as well as to the treatment of other unions and the union specifically at issue in the motion, although it also should consider other constituencies' rights and leverage in the Chapter 11 context.

Finally, the Court must find that the authorized representative of the employees has refused to accept such proposal without good cause, 11 U.S.C., Section 1113(c)(2). The Second Circuit has held that the purpose of the good

cause requirement serves to prohibit any bad faith conduct by an employer while at the same time protecting the employer from a union's rejection of the proposal without good cause, which is largely a tautology, 795 F2d and 273.

It is clear, though, that this requirement forces the union to the negotiating table. See In re Maxwell Newspapers, 981 F2d at 90. As stated by that court, this requirement fosters the goals of good faith negotiations and voluntary modification and induces the debtor to propose only those modifications necessary to a successful reorganization while protecting the debtor against the union's refusal to accept the proposal without a good reason.

Where the union rejects a proposal that is necessary, fair and equitable, it must explain the reasons for its opposition. On the other hand, if the union makes counterproposals that meet its needs while preserving the savings required by the debtor, its rejection of the debtor's proposal will be with good cause. See In re Horsehead Industries, 300 B.R. at 584, citing, among other cases, In re Maxwell Newspapers, 981 F2d at 90, and Royal Composing Room, 848 F2d at 349.

The debtors in their proposals have focused on both quantifiable cost savings and largely unquantifiable but nevertheless significant business risks that they

believe must be curtailed or eliminated in order for the debtors to successfully merge -- emerge from Chapter 11. The business risks that I'm referring to have to do almost entirely with the fact that under the collective bargaining agreements the debtors participate in a number of multi-employer pension plans set up under the Taft-Hartley Act, and certain of those plans are in serious financial distress or so-called red plans.

For example, the debtors have over 3,000 employees currently employed by the IBT, I mean, represented by the IBT in the Central States Pension Plan, which has a current liability in respect of vested benefits far in excess of the amount of plan assets so that its funded status is at approximately 48-and-a-half percent. The debtors also have a substantial number of IBT represented employees in the New England Teamsters and Trucking Industry Pension -- Multi-Employer Pension Plan, which also has a substantial excess of current liability versus plan assets such that its funding status is at approximately 40 percent.

The fact that these plans are substantially underfunded has been noted not only by the debtors but also in the financial world generally. The debtors had offered -- have offered up, for example, as Exhibit D-71 an analysis in the form of a special comment by Moody's on the fact that growing multi-employer pension funding shortfall is an

increasing credit concern. It's dated from September 2009. However, I believe that the trial record, including Mr. Hofing's testimony, confirms that there's been little to no improvement since then in terms of the risks involved.

They've also introduced testimony from May 27th, 2010 by Thomas C. Nyhan, executive director and general counsel of the Central States Southeast and Southwest Areas Pension Fund, in which he states that that fund faces an unprecedented financial crisis. If no action is taken, the fund is projected to be insolvent in the next 10 to 15 years.

The debtors therefore originally proposed that the collective bargaining agreements be amended so that they would withdraw from the MEPPs and crystallize their withdrawal liability, which would then be discharged upon the confirmation of their Chapter 11 plan. They have revised that proposal in light of the union's strong opposition to it and in essence have provided that in addition to providing for specific savings for contributions to ongoing pension obligations it will or the debtor will attempt to re-enter two so-called green MEPPs that are currently ones in which IBT employees of the debtors are beneficiaries before January 1, 2003, subject to certain conditions, including with respect to the health of -- the financial health of those replacement MEPPs and the

migration of all new hires away from the MEPPs and into a separate 401(k) plan. The debtors' proposal also contemplates having specific representation and control, in effect, of the green MEPPs board of trustees, although the debtors' witnesses recognized that those trustees would be fiduciaries to the plan or to the fund and not to the debtors.

It was clear from all of the parties -- all of the witness's testimony that the MEP issue, that is, the future, if at all, of the debtors' participation as an employer in the MEPs was the primary sticking point and the primary initial issue as well between the debtor and the union. The union was strongly opposed to the debtors' termination of all of the participation in all of the MEPPs. And yet, as the parties progressed in their discussion, the union did recognize, as testified to in particular by Mr. Wilson, that the existence of the serious problems with certain of the MEPPs, at least three of them being substantially in the red, creates potentially insurmountable obstacles without change to the debtors' emergence from Chapter 11.

This is because both the debtor and the union agree that to emerge from Chapter 11 in a way that will enable a successful reorganization, the debtor has to obtain not only substantial and meaningful concessions from its secured creditors but also in all likelihood a substantial

new money investment from third parties. And it is unlikely that either of those things would occur with the risks posed by the existing MEPP situation continuing without change.

Consequently, the union in its final proposal of April 15th, 2012, proposed a changed relationship between the debtor and the MEPPs. First, it proposed a somewhat reduced monetary concession with respect to the contribution rate by the debtor to the pension obligations that it would have to its employees. Hostess contemplated a 22 percent reduction with subsequent increases in contributions for benefits up to 5 percent per year for the period of the agreement, whereas the IBT proposed a 10 percent reduction in the contribution rate with the company continuing to contribute 10 percent less than the established rate in -- for the remainder of the agreement.

As importantly, the union proposed that the debtor would exit the MEPPs but provide at the same time for its re-entry into the MEPPs, including the troubled ones, under the following terms. Each MEPP would be required to adopt a new employer pool or amend its existing new employer pool consistent with the following: the PBGC would approve the new employer amendments within six months of the date of the agreement, and each MEPP would provide an agreement stating that the debtors' discharge of withdrawal liability in bankruptcy constitutes full satisfaction of that liability

for purposes of entry into the new employer pool. Further, in the event that the debtor is included in a mass withdrawal, that is, a withdrawal of either 100 percent or roughly 85 percent by agreement or a forced withdrawal of the employers in the funds, the MEP will allocate mass withdrawal liability proportionate to each employer's initial withdrawal liability, i.e. the withdrawal liability through the new employer pool amount based on that unfunded liability as opposed to the discharged unfunded liability.

In the event that any of the following withdrawal events as defined below occur, however, Hostess shall be deemed to have withdrawn from the effective MEP on the last date of the plan year prior to the withdrawal event's occurrence. Those events include Hostess being subject to an increase of 15 percent or more in the rate of its required annual contribution to the MEP, the IRS assessing an excise tax under 26 U.S.C., Section 4971 with respect to the MEP.

If the MEP fails for two consecutive years to satisfy its rehabilitation plan, the MEP becomes insolvent within the meaning of Section 4245 of ERISA. If for any two consecutive years the allocable new employer pool of unfunded vested benefits attributable to Hostess exceeds three times Hostess's annual contributions to the MEP for such years, UVBs from the MEP's old employer pool are

allocated to the new employer pool. If funding levels calculated in the same manner as for the MEP's annual funding notice fall below 80 percent in the new employer pool or below 20 percent in the old employer pool where there is a final non-appealable order of a court of competent jurisdiction holding that a MEP's new employer amendments are substantively illegal in a material respect and such illegality cannot be corrected through reasonable measures.

Under those circumstances, as I noted in the union's proposal, Hostess shall be deemed to have withdrawn and then shall go to a fallback MEP, which is specified in paragraph three on page six of the union proposal, although there is some uncertainty as to the triggers for that or the nature of the fallback MEP. And finally, if they fail -- if no MEPs qualify as a fallback MEP and/or the PBGC does not approve the amendments, the company will contribute the appropriate contributions into a third-party escrow account, and the parties will mutually agree on an acceptable alternative.

The debtor offered significant testimony as well as subsequent briefing to the effect that while it viewed that the union had acted creatively and in good faith in proposing the foregoing, it has not in so doing provided an acceptable alternative to the debtors' proposal or to the

simple termination of the MEPs and the creation of a new single-employer pension plan or 401(k) plan for the existing Teamster employees and new hires.

The debtors' concern is best put in the context of Mr. Kramer's testimony, who noted that in addition to changing its business plan and thereby substantially reducing costs and projecting additional earnings based on that business plan, all of which has a substantial execution risk, the debtor also carries two additional substantial execution risks for its emergence from bankruptcy. First, this is a Chapter 22 case. The debtor has previously been through a bankruptcy case and emerged, nevertheless, with significant levels of debt and its underlying business issues not having been materially improved upon.

And second, the debtor faces substantial uncertainty in obtaining new financing based upon the risks posed by the potential for increasing contributions to the MEPs and in addition the potential for substantial withdrawal liability from the MEPs in the future on a mass withdrawal scenario. The IBT as well as the Central States Pension Fund has tried to persuade the Court that this risk is actually relatively minimal, but I believe it is nevertheless substantial.

I will note that it is uncontroverted that UPS Corporation paid approximately $6 billion in order to be

relieved of its ongoing obligations to one of the MEPs, and I believe it's perfectly appropriate to infer that it had good reasons to do so based upon its assessment of the risks of being a continuing participant in the MEPs. I will note also that the proposals by prospective exit investors both -- all contemplate both the reduction of MEP exposure and a structure quite close to the debtors' final proposal.

I recognize that those proposals may be potentially self-serving and that I could, to some extent, play a game of chicken with the potential plan funders. But it appears to me based upon the testimony that I've heard as well as the additional briefing that has been given to me at my request on the legal risks posed by the IBT's proposed MEP solution that there is both a substantial legal and underlying economic risk of the debtors remaining in the IBT collectively bargained for MEPs even under the new employer pool proposed by the union.

It appears to me that while the debtor would have arguments as to the timing of the other employers in those funds ability to contest the proposal that the union is proposing, there is a substantial risk that the debtors providing for no withdrawal liability payments and relying simply on its discharge would give rise to a right and a potential objection that would be sustainable by the other employers in the MEP, some of whom are the debtors' direct

and primary competitors. That the PBGC's approval of the union-proposed structure is not or was not proper and that instead, the withdrawal liability that would be discharged by the debtor would be over allocated to the other employer sponsors of the plan.

I agree with the debtor -- I'm sorry. I agree with the IBT that the likelihood of a total or partial deemed withdrawal -- mass withdrawal from any of the MEPs is relatively unlikely. However, the consequences of there being such a mass withdrawal are potentially drastic. It is not clear to me that they would be limited as far as the other employers in the pool -- in the fund to the right to get refunds from the fund as opposed to the imposition of additional withdrawal liability above the new pool withdrawal liability on the debtor.

It appears to me that that risk, although fairly remote given the number of employers in the red plans, is nevertheless the type of risk that would cause a reasonable investor to question a long-term commitment to the debtor. It is clear from the testimony of all of the IBT's witnesses that it is that type of long-term commitment, one that focuses on the need to focus the debtor on necessary capital expenditures, advertising expenditures and R&D that is necessary to enable this debtor to reorganize.

Consequently, I conclude that with one exception,

the debtors' proposal or counterproposal of establishing two substitute green MEPs to migrate the IBT employees is necessary and in good faith for purposes of Section 1113 of the code. The one area that I have a grave concern about with regard to that proposal is the notion in that proposal that it would include only existing employees and not future hires. It appears to me that that would create substantial risk going forward for the replacement MEPPs since it is ongoing employees that help sustain the life of any pension plan, and that continuing obligation I believe is critical for the debtors' proposal to work.

I conclude that although the union has negotiated in good faith and tried to be creative with respect to the MEP issue, it has not accepted the debtors' proposal with the one caveat, however, that I mentioned with good cause. However, that caveat does mean that the union has turned down the proposal with good cause. Again, the caveat being that the debtors proposed the substitute MEPPs to contain only existing employees and not new hires.

The remaining areas of disagreement between the debtors' final proposal and the union's final proposal fall into two categories. First are economic differences between the proposals, both in terms of hard costs and soft costs. The second are in my view procedurally focused aspects of the agreements. Let me deal with the procedural aspects

first.

The union, as is to be expected, has a provision of its proposal calling for a grievance procedure to ensure that there has been equal sacrifice as among all of the debtors' employees, not just IBT employees but other union employees and non-union employees. It refers to requiring the, quote, same percentage reduction in total compensation as is being applied to the IBT bargaining unit employees in addition to the rescission or continued rescission of the late 2011 management team bonus and salary transaction. It also provides that the company shall not increase wages, including benefits, and benefits of current non-bargaining unit employees, including management, as an overall percentage beyond the effective overall total compensation percentage increases to be received by the bargaining unit employees.

As I noted, however, the fair and equitable and balance of the equities elements of Section 1113 do not require identical treatment nor even pro rata treatment among the debtors' employees, union and non-union. On cross-examination -- actually, on questioning from the Court, it was recognized that different types of employees have different leverage.

To be more specific, Mr. Hall recognized that one of the needs of this debtor is to get appropriately

experienced management. In his words, if he could get Jack Welch he would certainly pay for Jack Welch or his equivalent. So it appears to me that although it would be reasonable for a union to put some constraints tied to a business plan or to market conditions on the treatment of non-union employees and management, this aspect of the union's proposal goes beyond what is reasonable and goes beyond good cause.

The union's proposal also contemplates a specific Chapter 11 plan structure and process to get to confirmation of that plan as well as specific capital structure for the reorganized debtor. In addition, it contemplates not only board representation by the union but also a veto by the IBT-designated director with respect to certain transactions going beyond the normal conduct of business.

It is quite reasonable for the union to want to ensure that the debtor will have an appropriate capitalization coming out of bankruptcy. The union has in my view astutely identified the debtors' operational and business issues. There was substantial agreement between Mr. Kramer and the union's witnesses on this point, that the debtor has gone for too long without necessary capital expenditures for plant and its fleet of vehicles, that it has gone for too long without an appropriate SG&A budget, and that it has gone too long without appropriate R&D

budget.

It appears to me, however, that not only Mr. Kramer but also Mr. Rayburn and his turnaround plan of April 4th take those concerns well into account. Therefore, it would appear to me to be excessive for the union to require the -- as a condition of the collective bargaining agreement's amendment that the debtor go beyond what is reasonably necessary to execute that business plan and to propose a feasible, that is feasible under Section 1129(a) of the Bankruptcy Code, Chapter 11 plan.

I would not be saying this if I did not believe that the April 4th plan is in substantial agreement with the union in respect of what needs to be done as far as the debtors' capital structure and cost structure. So it appears to me that the provisions that I have discussed as well as the accountability provision, which deals with milestones going forward, are under the circumstances -- and it is important to note that it is only under the circumstances and relying upon the business plan -- overreaching by the union.

On the other hand, it appears to me to be reasonable and an exercise of good cause for the union to insist upon provisions implementing modified CBAs and, if achievable within a reasonable capital structure, a claim for the concessions -- the monetary concessions made by the

union, a prepetition claim, that is. It also seems to me to be reasonable that the union have representation on the debtors' board and that there be general level of information sharing so that the union can be reasonably assured that the business plan is being carried out.

Let me turn finally to the monetary provisions of the two proposals, the company's and the debtors'. Mr. Seltzer on behalf of the union accurately noted that unlike most Section 1113 motions, the debtors' Section 1113 motion did not put emphasis on a target dollar concession in the aggregate that it believed the union needed to meet for the debtors to successfully reorganize. Instead, Mr. Rayburn and Mr. Kramer focused on an EBIDTA margin that would enable the debtors to compete with their major competitors.

Initially, the debtors' view was that that margin needed to be in the 11 percent range. That was subsequently reduced to the 10 percent range. Interestingly, there was no real costing of the individual elements of the proposal that showed how that margin would be achieved in the debtors' proposal or in how the union's proposal was short of that margin. On the other hand, and this was really the only testimony as to the margin that would be achieved by the IBT proposal, Mr. Wilson testified without being shaken or even challenged on cross-examination that if the union's

proposal were implemented across the board, that is, not only for the IBT but similar changes were made for the other debtors' unions, the debtors would have an approximate 9 percent margin in respect of EBIDTA.

The union proposal when compared to the debtors' proposal on specific cost savings appears to the Court to be consistent with that analysis. In that regard, what I mean is that the differences in terms of specific cost savings do not appear to be dramatic between the debtors' last proposal and the union's last proposal, although obviously, the union's last proposal has fewer or less dramatic cost reductions than the debtors.

In the absence of any evidence to the contrary, it appears to me that Mr. Wilson's testimony should be accepted and that the EBIDTA margin difference here when one normalizes the union's -- the IBT's proposal across all the debtors' unions and cost structure is that there is a one percent margin difference between the debtor and the union. I conclude based upon that analysis that in respect of the specific financial concessions that the debtors have asked of the union and the union has responded to the debtors on, first, that the union has turned down the company's proposal with regard to these concessions for good cause and secondly, that the company's proposal is not necessary for a reorganization, i.e. the one percent difference in margin

has not shown to me to be material for purposes of Section 1113.

This means that both in respect of the pension plan proposal, for the reason -- the sole reason that I've identified, and in respect of the specific financial concessions aspect of the proposal I need to deny the company's motion. I believe that if the company adopted the union's economic proposals and proposed that it would in fact assume the IBT's collective bargaining agreements and provide that it would not subsequently reject them under Section 1113 in this case. And there was some mechanism that the debtors' ultimate plan would be consistent in terms of capital structure with the turnaround plan that Mr. Rayburn testified to from April 4th and finally that the debtors included new hires in their pension proposal that the debtors' proposal would in fact at that point meet the criteria of Section 1113.

Although, of course, each one of these determinations is guided by the particular facts at the particular time, so I would need to consider those facts. And this is a fast-moving case, as evidenced by the proposals provided by potential investors.

So as far as this motion is concerned and viewing the motion as a whole, I will deny the motion for the reasons that I have stated. I would, however, be receptive

to a motion that makes a proposal along the lines that I've outlined. And in particular, although I note that it would be painful for the specific MEPPs that the debtors must withdraw from, it is in my view necessary for the debtors to withdraw from those MEPPs, albeit that they would continue on the reduced funding level set forth in the union's proposal to fund pension benefits in a new and green pension plan.

I will note finally that there was quite credible testimony that if the debtors attempted to impose a collective bargaining agreement along the lines that I have described, the union work force has authorized their representatives to determine whether there should be a strike or not. I'll say two things in respect of that.

First, the obvious point that Judge Bernstein made in Horsehead, it appears to me, consistent with my finding, that it would be necessary for the debtors to exit the troubled MEPPs; that the ultimate result of a strike wouldn't be materially different from staying in those MEPPs for the debtors.

Secondly and more importantly, in this case, the IBT's level of knowledge about the debtor, realism and sophistication was clear and commendable. As I noted, it appears to me that the union has as good idea -- an idea about what is necessary for the debtors to reorganize,

except for the MEPP issue, as the debtors do.

I will note that Mr. Wilson testified that the issue of the MEPs should not cause a strike if dealt with in a way that is fair and reasonable. It appears to me that the only way to deal with that issue is to follow a plan along the lines that the debtors have proposed, the cost savings for that plan being, however, the savings proposed by the union.

What I believe truly jeopardizes the debtors' reorganization here, the debtors' ability to raise the money necessary to make the changes that both the union and the debtors agree must be made will come from investors who I believe correctly would not realistically take the risk imposed by the union's May 15th structural proposal for dealing with the MEPs. That proposal creates too much uncertainty for any entity willing to commit substantial amounts of capital and reputation and work to turn this company around.

So I'm going to ask Mr. Seltzer to submit an order consistent with my ruling. I know that one or two courts outside of the Southern District have said that you all only go through this once. I completely disagree with that. This is a very fact-specific inquiry based on the specific timing of the proposals. It's one of the reasons that judges get frustrated because we know that much more is

going on behind the scenes, and the proposal made before the start of the hearing really isn't the last proposal.

So I'm perfectly prepared on short notice to consider an amended proposal. I hope that's not necessary. I hope that the parties of interest here will reach agreement. And it's perfectly fine with me if they reach an agreement that in certain ways differs from what I've said I think will work here because they know this company better than I do. But on this record, those are my conclusions.

ALL: Thank you, Your Honor.

THE COURT: I also want to thank you all for streamlining the trial. It saved the debtor a lot of money.

(Whereupon the proceedings were concluded at 7:02 PM)

I N D E X

E X H I B I T S

R U L I N G S

C E R T I F I C A T I O N

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: May 16, 2012

Signature of Approved Transcriber

Veritext

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